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November 18, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte Submission
PR Docket No. 93-61

Dear Mr. Caton:

The undersigned represents MobileVision, L.P., ("MobileVision"), and is filing the original and one copy of this written ex parte communication pursuant to Section 1.1206(a)(1) of the Commission's Rules.

MobileVision regrets the continuing growth of the ex parte file at this late date in the proceeding but feels compelled to respond to the most recent submission by Southwestern Bell Mobile Systems ("Southwestern Bell") filed on November 9, 1994. That filing urges both the adoption of specific auction rules singularly tailored to benefit Southwestern Bell's interests and the cancellation, not merely the modification, of all prior licenses granted in the spectrum to wideband AVM providers, either immediately or in fifteen months.

Southwestern Bell's submission is the latest in a series of last ditch proposals to avoid through rule changes and its deep pockets its competitive disadvantage arising by reason of its late entry in the LMS competition. Having failed to file for adequate licenses necessary to deploy systems and recognizing that it will not be the beneficiary of any reasonable transition rules protecting licensees who have expended years of effort in their own systems development, Southwestern Bell would urge the stripping of all prior licenses and the adoption of spectrum allocation and auction rules that every other wideband provider is on record as opposing.

The Petition for Rulemaking in this matter was filed two and a half years ago and during the intervening period of

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uncertainty the capital markets have been unavailable to entrepreneurs such as MobileVision while potential investors await the proceeding's outcome. This rulemaking should clearly and promptly establish the services and parameters of use of LMS systems in the spectrum, the allocation of the spectrum for such use (and other uses within it), whether the licenses for such use granted in the future will be the subject of auction techniques, and how current licensees will be affected, if at all, by any such decision to auction.

Suffice it to say, after two and a half years, the Commission should not now try and determine on the basis of Southwestern Bell's input alone the intricate rules that will be required to conduct a fair and efficient auction of spectrum. That development should, we urge, be the subject of a separate rulemaking.

Nor after twenty years of existing rules should those who have expended millions of dollars in the development of wideband LMS systems be brushed aside without protection for their prior investment in favor of those who, in the disingenuous words of Southwestern Bell, will meet the "market-based test" to "substantiate" their "need" by "expending real dollars to acquire this extremely scarce resource."¹ In plain English, having sat out the war, the "carpetbaggers" now want to buy up the spoils.

For ten years MobileVision and others have been expending "real dollars" in system development. The Commission should not now be enticed by the simple solution - let money alone determine license allocation - offered by the only participant who

¹ Equally disingenuous is the statement in the current Southwestern Bell submission that "the principal issues appear no closer to consensus resolution" than in 1993. Southwestern Bell representatives attended a meeting conducted by the Private Radio Bureau on October 6, 1994, at which it was clear that on many if not most of the principal issues, and particularly on allocation and spectrum blocks for auction consideration, the only impediment to consensus was the positions of Southwestern Bell that are prevalent throughout its current submission. When the participants were asked by the PRB staff what the minimum bandwidth should be no one except Southwestern Bell indicated that it could be less than six MHz.

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will provide its service as an adjunct to cellular service, and thus limit competition and choices in the marketplace.²

Instead, we would urge the Commission to follow the suggestions of our earlier filings to establish equitable grandfathering periods for current licensees. The alternative is not merely unfair to the entrepreneurs in the LMS industry but, by eliminating them as competitors in any ultimate auction of spectrum, will be counterproductive to the success of that effort.

Sincerely,



John J. McDonnell

JJM/agw
cc: Attached Service List

² Southwestern Bell's protestations to the contrary, it is clearly on record as intending to use its location services as an adjunct to its cellular services. See Comments of Southwestern Bell, filed June 29, 1993. "[Southwestern Bell] believes that LMS will be a natural adjunct to cellular service" Id. at 2. See also discussion at page 4 of the same filing.

CERTIFICATE OF SERVICE

I, Lila Mitkiewicz, hereby certify that copies of the foregoing **Ex Parte** filing were forwarded this 18th day of November, 1994 by U.S. first-class mail to the following individuals:

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